The

REPORTER

For Conscience' Sake

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Legal Highlights Of Recent Supreme Court Cases

By ROBERT MYERS, *Attorney*

The Supreme Court, in directing acquittal in the cases of *Simmons*, *Sicurella*, and *Gonzales*, but affirming the conviction of *Witmer*, enunciated a new procedure that must be followed by Selective Service in processing conscientious objectors, and clarified at least three other points of law about which there has been disagreement among the lower federal courts.

The main point raised by Gonzales was

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Supreme Court CO Decisions Have Far-Reaching Implications

The Supreme Court, on March 14, handed down sweeping decisions in the four conscientious objector cases of *Witmer* v. *U. S.*, *Sicurella* v. *U. S.*, *Simmons* v. *U. S.*, and *Gonzales* v. *U. S.* The results of these decisions will undoubtedly affect the cases of thousands of COs, especially those who have not or will not gain recognition of their CO claims at the local board level. The Supreme Court reversed the convictions in all but the *Witmer* case. The vote of the court in all but the *Gonzales* case was 6 to 2, which was 5 to 3.

The opinion in the *Gonzales* case will probably have greater effect on the majority of COs than any of the other three opinions. Here the court ruled that the Justice Department shall furnish the registrant with a copy of their recommendation to the appeal board. The registrant must then have an opportunity to send to the appeal board, in advance of classification, a reply to this recommendation.

Since the regulations presently in effect do not require this procedure, it is believed that every case where a CO classification has been denied by a state appeal board and which is still within the jurisdiction of either Selective Service or the Justice Department will be reviewed. This means that there will be a lull in any further actions on these cases, that many cases will have to be remanded to local boards, and that the Justice Department will dismiss cases on which they are working.

The NSBRO has received word that a State Directors Advice, just issued by National Headquarters of Selective Service, instructs appeal boards to delay all CO cases until the Justice Department can comply with the Supreme Court decisions.

About ready, as this article goes to press, is Operations Bulletin No. 123. This order will describe in detail the procedures to be followed by Selective Service, the Justice Department, and the registrant claiming a CO classification. The letter of recommendation from the Justice Department will be sent to the

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COs Still Need Help

The unceasing battle of conscientious objectors to achieve recognition of their convictions still remains difficult. The interpretation of the very complex procedures of Selective Service, the efforts to halt the continuing desire by the Department of Justice to repeatedly prosecute COs, the maintaining of a constant watch in Congress to see that COs are not deprived of any gains in recognition, especially in the fight over provisions in the UMT-Reserve-Draft Extension bills, and the many other necessary jobs to be done, require that the $30,000 budget of the NSBRO be maintained. Contributions this year are below that of previous years. Your assistance in meeting our budget, which has not increased for the last several years, is vitally needed. Will you please send this coupon and your contribution as soon as possible? We express, however, our deep gratitude to the many people who have made contributions in the last few months. Thank you.

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LEGAL HIGHLIGHTS

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that he should have received a copy of the recommendation made by the Department of Justice to the appeal board so that he could present his side of the story before the appeal board classified him. Selective Service had not allowed him to file any data with the appeal board after his case was appealed. The Supreme Court held that the Selective Service System had been in error. Thus the Supreme Court has ruled that henceforth each registrant shall be sent a copy of the final Justice Department Advisory Recommendation that goes to the appeal board so that he can file with that board "his facts and arguments to meet its contention" *before the board makes its classification.* Significant parts of the opinion are as follows:

"It is true that the recommendation of the Department is advisory. . . . Indeed, this very consideration led us in *United States* v. *Nugent*, supra, to allow considerable latitude in the auxiliary hearing which culminated in the Department's report. A natural corollary of this, however, is that a registrant be given an opportunity to rebut this recommendation when it comes to the Appeal Board. . . .

"The petitioner (is) entitled to know the thrust of the Department's recommendation so he (can) muster his facts and arguments to meet its contentions.

". . . so the right to file a statement before the Appeal Board includes the right to file a *meaningful* statement, one based on all the facts in the file and made with awareness of the recommendations and arguments to be encountered."

Heretofore, registrants have never had an opportunity to file with the appeal board any data to meet or rebut the material gathered by the FBI.

When the Supreme Court decided the *Nugent & Packer* cases in June, 1953, it stated that due process was served if a registrant was supplied with a "fair résumé of the adverse evidence in the FBI report." Thereafter, the lower federal courts were in wide disagreement as to just what was meant, and whether the courts were required to determine if a "fair résumé" had in fact been given in a particular case. Many courts said yes, many said no.

The main contention in the *Simmons* case was that he had not been given a fair résumé of all adverse information in the FBI report and therefore, in effect, had been denied a fair hearing. Simmons had sought to subpoena the FBI report at the trial to determine whether or not a fair résumé had in fact been given. In ordering the acquittal of Robert Simmons, the Supreme Court did not find it necessary to tackle the problem head on, but did emphasize the necessity of giving each registrant a fair summary of the FBI report, stating:

"We (do) not view this provision for a fair summary as a matter of grace within the Department's discretion, but rather as an essential element in the processing of conscientious objector claims. . . . If the balance struck in *Nugent* is to be preserved, the registrant must receive the fair summary to which he is entitled."

In the *Sicurella* case, the Supreme Court apparently cleared up another point that has led to varying decisions in the lower courts. Sicurella had sought a I-O classification but had indicated to his draft board that he *would* engage in a theocratic war. The Supreme Court held that it was error of law for the Selective Service to have denied Sicurella his conscientious objector classification on the ground that his belief made him ineligible for such classification. Thus, the Supreme Court ruled in this case that it is not only the province but the duty of the courts to correct errors of law made by the local and appeal boards. The Court said:

". . . we feel that this error of law by the (Justice) Department to which the Appeal Board might naturally look for guidance on such questions, must vitiate the entire proceedings at least where it is not clear that the Board relied on some legitimate ground. . . .

". . . We believe the reasoning of the Government in denying petitioner's claim is so far removed from any possible congressional intent that it is erroneous as a matter of law."

Although the conviction of Philip Witmer was sustained on the ground that there was evidence in the file to raise doubt of his sincerity, viz, there was "basis in fact" for a denial of his conscientious objector claim, nonetheless the Supreme Court did take pains to spell out that neither the local board nor the appeal board can take into consideration a registrant's demeanor and appearance unless they reduce their observations to writing. The Court said:

". . . If, as here, the issue is the registrant's sincerity and good faith belief, then there must be some inference of insincerity or bad faith.

"Since Witmer stated his beliefs with apparent sincerity and since we find no indication anywhere in the record that his demeanor appeared shifty or evasive or that his appearance was one of unreliability, we must examine the objective facts before the Appeal Board to see whether they cast doubt on the sincerity of his claim. . . ."

These several decisions by the Supreme Court have done much to clear up confusion and conflicting opinions in the lower federal courts, and should make for more uniform decisions in the future.

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CO DECISIONS

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appeal board, which will in turn send it to the registrant and who will then have a limited amount of time to furnish his evidence to the appeal board.

The *Gonzales* opinion further complicates any appeal procedures. If court decisions result in increased complications, it is possible that the Justice Department may be taken out of the appeal procedures. The *Gonzales* opinion will also help to clarify the position of the appeal boards in Selective Service. In the past, the appeal boards have often been thought of as appellate bodies whose job is to review the classifications made by the lower boards. Now the appeal boards will have a stronger basis for their claim of classifying *de novo*, that is, without regard to the previous classification. This point may be important in court cases when attacking procedural errors by the local board, since a *de novo* classification may mean that any such errors will have been corrected.

Just as the *Gonzales* opinion stated the CO has the right to file a meaningful statement with the appeal board, the

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9th CCA Acquits Chernekoff

The Ninth Circuit Court of Appeals on Feb. 24, 1955, reversed the conviction of William Chernekoff, Jr., and thereby wrote an opinion which should be of much interest to other COs in court trials. The acquittal of Chernekoff, a Molokan of California, was based on three procedural and one discretionary point.

The procedural points were: (1) the failure of the local board to post the names of advisors to registrants (the regulations were changed on this point on Jan. 31, 1955), (2) a faulty notice by the Hearing Officer which did not let Chernekoff know of his opportunity to ask for a fair résumé of derogatory evidence, and (3) the faulty induction ceremony.

One paragraph of the opinion clearly describes the government's error when determining that the registrant was insincere. The paragraph is as follows:

> "Likewise in the course of argument it was represented and unchallenged that the derogatory information in the file as to appellant's religious sincerity concerns a single conviction for drunkenness and a later one for speeding. To be a good church member does not necessarily entail being a saint. A mortal may occasionally weaken and still remain loyal to the tenets of his faith. A conscientious objector is not to be considered an outcast susceptible of being convicted of a felony by any stray scintilla of evidence, indicating sporadic deviation from the principles and approved practices of his religion. We are all children of Eve."

COs to Receive I-W Classification Card

Selective Service regulations, signed into law by the President on Jan. 31, 1955, require the surrender of the Registration Certificate (SSS Form 2) and the Notice of Classification (SSS Form 110) by all men entering the armed services.

Upon release from service, provisions are made for reissuing these two cards. The regulations require every registrant, except those in the armed services, to carry these cards at all times.

Also signed by the President on Jan. 31 are regulations providing that all COs in the civilian work program will receive a new Notice of Classification with the I-W indicated on it.

The Hill

Written by Victor Chapin, "The Hill" is a factual story of the service which the author gave as a conscientious objector in a mental hospital during World War II. This first person account tells of the months he spent as an attendant in a state institution, which for obvious reasons, he identifies as on The Hill. From the CPS Directory, however, it appears that the Connecticut State Hospital at Middletown is the one referred to by the author.

The introduction, by Judge Curtis Bok of Philadelphia, admires Chapin for handling the difficult subject "without admitting any particular defeat or claiming any special victory."

This book tells of the inner turmoil faced by Chapin as he worked and talked with other employees and the patients. But this account reveals more than a shocking case history as it describes both the tragedy and mystery of life (241. pp. Rinehart and Company, New York, $3.)

CO DENIED CITIZENSHIP

John Thiesen, a Mennonite from California, was denied naturalization by California Superior Judge Machetanz on Feb. 23, 1955. In a case somewhat similar to that of Arthur Jost, also a Mennonite from California (see Mar. and Dec. 1954, issues of REPORTER), the Court denied naturalization because the oath of citizenship could not be taken "without mental reservation."

The basis for the Court's decision was a statement by Thiesen that he would not grow food and sell it to the armed forces for the specific purpose of feeding the front line soldiers. The Court reasoned that Thiesen would therefore not even indirectly support the war effort. Thus Thiesen could not take the oath of citizenship which is prescribed for conscientious objectors to all forms of military service, which oath could require him to do any type of work of national importance under civilian direction.

JUDGE GIVES MENNONITE 5-YEARS PROBATION

Jonathan Mendel, a Mennonite from South Dakota, was just given an unusual five-year probationary sentence after being found guilty of refusing to submit to induction into the armed services in 1953. Judge George T. Mickelson sentenced Mendel to three years probation with the Mennonite Central Committee, followed by an additional two years of probation with no restrictions as to the place of employment.

SS Bulletin Reports "A Man Can Change His Mind"

National Headquarters of Selective Service, in their March, 1955, issue of their monthly paper, *Selective Service*, has an article entitled "A Man Can Change His Mind." The article told of a Naval Aviation Cadet—now planning to make the Navy his career—who had previously been a conscientious objector in the alternative service program and assigned to an Illinois state mental hospital. This change of conviction by the naval cadet was brought about largely through his pastor's influence, was the report.

It is interesting to note the speed and alacrity with which Selective Service accepts a man's change in convictions from conscientious-objection to acceptance of military service. Experience at the NSBRO shows, however, the extreme reluctance of Selective Service and the armed services to accept a man's change of mind when he progresses in the opposite direction. (It sometimes requires years of effort and even a jail sentence for a registrant to adequately prove he is now a sincere conscientious objector, when in his earlier youth he had not claimed such objection.)

Two interesting questions are raised by this article in *Selective Service:* (1) Is it possible for a man to change his mind either way with equal ability?, and (2) If a registrant changes from a CO to a combatant, how does he go about proving that he is now a *sincere* combatant, and does he have to prove it in the same manner and with the same difficulty that a man making the change from a combatant to a CO has to prove his sincerity?

LARAWAY FACES SECOND PROSECUTION

Frank Laraway, from Alabama, is reported to have been arrested for an alleged violation of the Selective Service law. In 1952, he was arrested and sentenced to prison for not registering.

ERRATUM

The January, 1955, REPORTER on page 3 stated that the court case of Joseph T. Moore against New Jersey public school officials was dismissed. Instead, only a motion for dismissal was made, with the judge staying the proceedings until a ruling has been made in the state courts.

CO DECISIONS

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Simmons opinion restates the right of a CO to a fair hearing before the Hearing Officer. And for a fair hearing, the registrant must receive a fair résumé so he may explain, rebut, or otherwise detract from the damaging force of any derogatory evidence. The effect of the *Simmons* opinion may be lost because of the later opportunity by the registrant to rebut or explain any derogatory evidence, as mentioned in the *Gonzales* opinion.

Although the *Sicurella* opinion primarily answers questions about the relation of conscientious objection and theocratic warfare as defined by the Jehovah's Witnesses, certain parts will affect all COs. The Court states that the test of conscientious objection is whether or not the registrant is opposed to *participation* in war, and not whether he is opposed to all war. The Court also writes that once a CO comes within the provisions of the law defining conscientious objectors, "he does not forfeit its coverage because of his other beliefs which may extend beyond the exemption granted by Congress."

"Any fact which casts doubt on the veracity of the registrant is relevant" and provides a "basis in fact" for denying a claim as a conscientious objector, stated the Court in the *Witmer* opinion. However, it is necessary that observations of the registrant's demeanor and appearance be put into writing before such information can be considered by local or appeal boards.

Four other CO cases have been reversed by the Supreme Court on the day this article goes to press, March 28. They are *Bates* v. *U. S.*, *Moore* v. *U. S.*, *Simon* v. *U. S.*, and *Bradley* v. *U. S.* The decisions were made without oral argument before the Court.

Bates was denied a CO classification and because he had no Department of Justice inquiry, hearing, and recommendation, was acquitted. Moore, a member of the Church of Jesus Christ (Harshmanites), had his case remanded to the district court for a retrial because the district court had refused to allow his witnesses to testify. The witnesses, on religious principles, would not "solemnly affirm" to tell the truth but would "affirm." Simon was acquitted by reason of the *Simmons* case and Bradley acquitted because of the *Gonzales* opinion.

The cases of *White* v. *U. S.*, *Tomlinson* v. *U. S.*, *U. S.* v. *Close*, and *U. S.* v. Hinkle were denied review by the Supreme Court.

Men Liable To Age 35 May Be Inducted Even If Draft Dies

Even if the draft law is not extended beyond July 1, 1955 (there seems no possibility it will die), men whose liability extends to age 35 could be inducted after the expiration of the law on June 30, according to recent word in the *Selective Service* bulletin by Maj. Gen. Lewis B. Hershey. The General, however, comments that this is merely an academic observation since it seems certain the law will be extended.

The curious fact is brought about by a little known section of the draft law. It is as follows:

> "Section 17(c). Notwithstanding any other provision of this title, no person shall be inducted for training and service in the Armed Forces after July 1, 1955, except persons now or hereafter deferred (since June 19, 1951) under section 6 of this title after the basis for such deferment ceases to exist."

German Committee Thinks CO Protection Inadequate

The Ecumenical Press Service release of Jan. 26, 1955, quotes a "declaration" of the German Committee on Conscientious Objection. This declaration states that "the right to refuse to undertake military service for reasons of conscience is not adequately protected."

In the opinion of the Committee, "legislation on conscientious objection which preserves the principles of democracy" may give rise to three main dangers:

1. The legislation may be based on an inadequate conception of conscience.
2. The only alternative provided for military service seems to be a compulsory form of service such as would not be acceptable to the majority of conscientious objectors.
3. Any legislation can be made ineffectual, unless it is carried into effect by procedure that is irreproachable.

ANNUAL REVIEW OF FILES REQUIRED

It is well for COs, and others, to recall that Local Board Memorandum No. 55 calls for a review, at least once annually, of the file of every registrant who has been classified in an exempt or deferred class. Local boards may review such classifications more often if they desire.

Because of this, conscientious objectors in particular should be certain to have the information in their files up to date. Any growth in their belief should be expressed in communications to the local board. Any other data affecting their claim should be filed systematically.

LETTER TO NOTIFY COs OF WORK POSTPONEMENT

Local draft boards have been ordered by National Selective Service Headquarters to notify Class I-O registrants (conscientious objectors) by letter whenever the postponement of an Order to Report for Civilian Work (SSS Form 153) is given to the CO because of his student status. This order was issued through Operations Bulletin No. 82.

Conscientious objectors in Class I-O who are full-time college students shall receive a postponement of issuance of a work order until the end of their current academic year. A letter notifying the CO of this postponement shall be sent by the local board, with a copy to be placed in his file.

AFSC Lists Teaching, Farm Opportunities

The American Friends Service Committee (AFSC), 20 South 12th St., Philadelphia 7, Penna., has prepared a two-page list of farm work possibilities and a three-page list of teaching possibilities. All the agencies and institutions listed are approved by Selective Service for the employment of COs. Write directly to the AFSC for copies of the lists.

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